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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/550,047	09/21/2005	Peter Stierle	3429	6199

7590
Striker Striker & Stenby
103 East Neck Road
Huntington, NY 11743

03/09/2007

EXAMINER

BRAKEWOOD, CANDACE ELIZABETH

ART UNIT	PAPER NUMBER
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3721

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
3 MONTHS	03/09/2007	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

Office Action Summary

Application No.

10/550,047

Applicant(s)

STIERLE ET AL.

Examiner

Candace Brakewood

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 21 December 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-11 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-11 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 21 December 2006 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
- ☒ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

1. This action is in response to applicant's amendments received on December 21, 2006.

Information Disclosure Statement

2. The information disclosure statement filed September 21, 2005 fails to comply with 37 CFR 1.98(a)(3) because it does not include a concise explanation of the relevance, as it is presently understood by the individual designated in 37 CFR 1.56(c) most knowledgeable about the content of the information, of Swiss Document 692,488. While it is acknowledged that a search report listing the document has been submitted, the report is not in English. It should also be noted that in the Remarks filed on December 21, 2006, the applicants stated that a copy of the translation of the Swiss Document was submitted with the amendments, but the translation was not actually included. Therefore, the Swiss Document 692,488 has not been considered.

Drawings

3. The amended drawings received on December 21, 2006 are acknowledged and accepted.

Specification

4. The amendments to the specification received on December 21, 2006 are acknowledged and accepted.

Claim Rejections - 35 USC § 102

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

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A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

6. Claims 1-8 and 10 are rejected under 35 U.S.C. 102(b) as being anticipated by Strözel et al. ('160) for the same reasons set forth in the previous Office Action (paper no. 20051001).

Regarding the amendments to claim 1, it should be noted that the intake nozzles (30) are mounted in an outer wall of the housing, as shown in Fig. 1 of Strözel et al. ('160). It should also be noted that the cooling conduits (34) are adjacent to at least one intake nozzle (30), as they are positioned near to the intake nozzles (Fig. 1). Additionally, the cooling conduits are closed off from an interior of the housing (the leftmost section of the housing having the output spindle, 20, as shown in Fig. 1), and the cooling air (32) reaches the cooling conduit directly and unhindered, as there is nothing standing in the way of the incoming air from the nozzles (30) flowing to the conduits (34).

Claim Rejections - 35 USC § 103

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

8. Claims 9 is rejected under 35 U.S.C. 103(a) as being unpatentable over Strözel et al. ('160) for the same reasons set forth in the previous Office Action, *supra*.

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9. Claims 9 and 11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Strözel et al. ('160) in view of Anton (2,976,436).

Regarding claim 9, Strözel et al. ('160) disclose the invention substantially as claimed except for the lateral air inlet openings. Anton ('436) teaches the use of lateral air inlet openings (31, 32) in a portable electric tool for the purpose of facilitating ventilation/cooling of the device. Therefore, it would have been obvious to one having ordinary skill in the art at the time of the invention to have provided the device of Strözel et al. ('160) with lateral air inlet openings in order to facilitate ventilation/cooling.

Regarding claim 11, Strözel et al. ('160) disclose the invention substantially as claimed except for at least two air inlet openings that are different in design. Anton ('436) teaches the use of multiple air inlet openings (31, 32) that are different in design (Fig. 1) in a portable electric tool for the purpose of facilitating ventilation/cooling of the device. Therefore, it would have been obvious to one having ordinary skill in the art at the time of the invention to have provided the device of Strözel et al. ('160) with multiple air inlet openings that are different in design in order to facilitate ventilation/cooling.

Response to Arguments

10. Applicant's arguments filed December 21, 2006 have been fully considered but they are not persuasive.

First, the applicants contend that Strözel et al. ('160) do not show a direct supply of air from the inlet to the conduit, where the inlet is adjacent to the conduit. The examiner asserts that claims are given their broadest reasonable interpretation. Therefore, Strözel et al. ('160) do have a direct supply of air from the inlet to the conduit,

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as can be seen in Fig. 1, as the air proceeds in an undeviating, short route to the entrance of the conduit. Additionally, given the broadest reasonable interpretation of the term "adjacent", the conduit is adjacent to the inlet, as they are positioned near to one another.

Next, applicants contend that the cooling device of Strözel et al. ('160) only moderately cools the electric motor, in comparison to the applicants' cooling arrangement. The examiner asserts that Strözel et al. ('160) meets the structural limitations set forth in the claims, as previously stated in para. 5-9 of this Office Action, and therefore, the cooling device of Strözel et al. ('160) is deemed to have sufficiently great cooling power.

Lastly, the applicants argue that the rejection of claim 9 under U.S.C. 103 is not obvious. The examiner maintains the position that lateral air openings are commonplace in the power tool art, and therefore, the addition of lateral air openings to facilitate cooling of the electric tool would have been obvious. In addition to the teachings of Anton (2,976,436), as found in para. 9 of this Office Action, Riedl et al. (6,543,549), Quirijien et al. (2001/0052419), Turner et al. (2,456,571) and Decker (2,155,082) are also cited as references that teach the use of lateral air openings in portable electric tools.

For the reasons above, the grounds of rejection are deemed proper.

Conclusion

11: Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP

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§ 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

12. A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

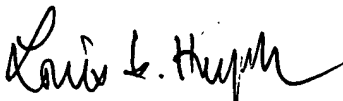
13. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Candace Brakewood whose telephone number is 571-272-3115. The examiner can normally be reached on Monday-Thursday, 7am-5:30pm.

14. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Rinaldi Rada can be reached on 571-272-4467. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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15. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Candace Elizabeth Brakewood
Examiner
Art Unit 3721
March 3, 2007


LOUIS K. HUYNH
PRIMARY EXAMINER